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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,080	04/22/2004	Todd Russell Ingram		6026

27955 7590 01/11/2007  
TOWNSEND & BANTA  
c/o PORTFOLIO IP  
PO BOX 52050  
MINNEAPOLIS, MN 55402

EXAMINER
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OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/829,080	<b>Applicant(s)</b> INGRAM, TODD RUSSELL	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-19 is/are pending in the application.
- 4a) Of the above claim(s) 11, 13-15, 17 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10, 12, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2006 has been entered.

### ***Election/Restrictions***

This application contains claims 11,13-15,17, and 19 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7-10,12,16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss US 4,141,479 in view of Wall 5,277,466.

Re claim 7, Moss discloses a tool comprising a unary, v-shaped (at least as far as Applicant's invention depicts a v-shape), open-jawed mouth having a closed end (22) defining an outer perimeter, and an open end (26) defined by an inner perimeter, said inner perimeter comprised of a first straight portion (vertical lower portion 26) having a first end, a second end, and a middle portion therebetween, a curved portion (arcuate upper portion 22) having a first end, the first end of the curved portion being connected to the second end of the straight portion; and a second straight portion (10) having a first end, a second end, and a middle portion therebetween, the first end of the second straight portion being connected to the second end of the curved portion; friction ridges (6,12) at spaced intervals along the entire length of the middle portions of straight portions of the inner perimeter of the mouth; an elongated connecting rod (5); means (tubular flange 14) of joining said connecting rod at its lower end to one side portion of said mouth such that the closed end of said mouth is directed toward a user (see fig. 3); a handgrip (see upper portion of rod 5); and means of joining said handgrip to said connecting rod at its upper end;

The functional recitation "whereby a user can grip said fireplace tool by said hand grip, push said open jawed mouth onto said log, thus applying a progressively tightened gripping force created by the combination of said spring-like effect and said friction effect, lift, move, reposition, and release said log, without manipulating any moving parts" has not been given patentable weight because it has been held that a recitation

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with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

Moss discloses "In operation, when it is desired to retrieve a semi-rigid container, the operator holding the handle merely places the semi-cylindrical element over the container and the container is thus immediately and automatically entrapped by the semi-cylindrical element without any mechanical manipulation by the operator. The transitional inlet 19 facilitates the entry of the container within the semi-cylindrical member 22. The container is now entrapped by the lower portions 26,26 such that as the litter retriever 2 is thrust against the container, the piercing elements 6 penetrate the container without any possibility of the container slipping away from the piercing elements" (col. 3, lines 53-64). However, Moss does not disclose the device having a spring-like effect when urged apart. Wall discloses a resilient "spring-like" mouth made of resilient wire material that is urged apart by an object in order to lift it. It would have been obvious to one of ordinary skill at the time of the invention to make the device of Moss from a resilient material so that the mouth could be urged apart in order to resiliently hold objects as taught by Wall.

Re claim 8, Moss discloses a wedge shaped tip (12) disposed at the first end of the first straight portion of said inner perimeter of said mouth.

Re claims 9 and 10, Moss does not disclose the material from which the jaw (arms 12 and 13) are made. It would have been obvious to one of ordinary skill at the time of the invention to form the jaws from iron or steel as iron and steel are well known

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as durable materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Re claim 12, Moss discloses joining three pieces the open jawed mouth, connecting rod, and handgrip (figs. 1 and 2).

Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss in view of Wall and further in view of US Patent Application Publication 2005/0110289 to Myers. Moss does not disclose the use of threaded coupling to connect the jaw, rod or handgrip together. Myers discloses a dual function fireplace poker connected by threaded couplings (see fig 2 and paragraph 18) It would have been obvious to one of ordinary skill at the time of the invention to connect the sections of the tool of Moss by threaded couplings as taught by Myer so that the tool could be disassembled and stored in a compact manner.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EOO 12/26/06



**EILEEN D. LILLIS**  
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